

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.:

JESUS GONZALEZ

Plaintiff,

v.

SHF 18 LLC, d/b/a Acai Brazil
and MARINER CAPITAL LLC.

Defendants.

COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff, Jesus Gonzalez, by and through the undersigned counsel, hereby sues Defendants, SHF 18, LLC, d/b/a Acai Brazil, and Mariner Capital, LLC, for injunctive relief pursuant to 42 U.S.C. §§12181-12189 of the Americans with Disabilities Act (“ADA”) and 28 C.F.R. Part 36 and alleges:

1. This is an action for declaratory and injunctive relief pursuant to Title III of the Americans with Disabilities Act (“ADA”) 42 U.S.C. §§12181-12189. This Court is vested with original jurisdiction under 28 U.S.C. §1331.

2. Venue is proper in the Court, pursuant to 28 U.S.C. §1391(b) in that all events giving rise to this lawsuit occurred within the Southern District of Florida and the subject premises is located within the jurisdiction of this Court.

3. Plaintiff, Jesus Gonzalez (“Plaintiff”) is an individual with disabilities as defined by the ADA, and a resident of Miami-Dade County, Florida, and otherwise *sui juris*.

Gonzalez v. SHF 18, LLC
Complaint for Injunctive Relive

4. Defendants are authorized to conduct, and are conducting, business within the State of Florida and within the jurisdiction of this court.

PARTIES

5. Plaintiff, Jesus Gonzalez (“Plaintiff”) is a resident of the state of Florida. Plaintiff has a “qualified disability” under the ADA as he is disabled with neuropathy and nerve damage due to radiation and utilizes a wheelchair for mobility. Plaintiff’s disability is defined in 42 U.S.C. §12102(1)(A)(2), 28 C.F.R. §36.105(b)(2) and 28 C.F.R. §36.105(2)(iii)(D).

6. Plaintiff is also an advocate of the rights of similarly situated disabled persons, and a “tester” for the purpose of asserting his civil right, and to determine whether public accommodations are in compliance with the ADA/ADAAG.

7. Defendant, SHF 18, LLC, is a Florida Limited Liability Company, which upon information and belief is the owner and operator of Acai Brazil’s restaurant, located within this district at 18220 W Dixie Hwy, North Miami Beach, Florida 33160, and subject to this action, and referred hereto as “SHF 18, LLC” or “Operator”.

8. Defendant, Mariner Capital, LLC, is a Florida Limited Liability Company, which upon information and belief owns and/or operates a commercial real property identified as Folio: 30-2204-009-0870, with post address of 18220 W Dixie Hwy, North Miami Beach, Florida 33160, the subject of this action. Defendant’s real property is built as a shopping center and referenced throughout as “Mariner Capital” or “Owner,”.

**Gonzalez v. SHF 18, LLC
Complaint for Injunctive Relive**

FACTS

9. Defendant, “SHF 18, LLC”, is the owner and operator of the “Acai Brazil” restaurant, located at 18220 W Dixie Hwy, North Miami Beach, Florida 33160, and open to the general public. As such, a Place of Public Accommodation subject to the requirements of Title III of the ADA and its implementing regulation as defined by 42 U.S.C. §12182, §12181(7)(B) and 28 C.F.R. §36.104(2).

10. At all times material hereto, Defendant, “Mariner Capital”, has leased its commercial property to Defendant, “SHF 18, LLC”, who in turn has operated (and continues to operate) its “Acai Brazil” restaurant within that leased space.

11. As the owner/operator of a restaurant, which is open to the public, Defendant, “SHF 18, LLC”, is defined as a “Public Accommodation” within meaning of Title III because it is a private entity which owns, or operates a restaurant; 42 U.S.C. §12182, §12181(7)(B) and 28 C.F.R. §36.104(2).

12. On May 11, 2024, Plaintiff personally visited the “Acai Brazil” restaurant, to inquire and/or use of their services, and to test for compliance with the ADA/ADAAG, but because he perambulates with the assistance of a wheelchair, Plaintiff was denied full and equal access, and enjoyment of the facilities, services, goods, and amenities, because of the architectural barriers met at the Subject Property

13. Based on the access impediments Plaintiff encountered, Plaintiff has been denied full and equal access by the operator Defendant, “SHF 18, LLC”, and by the owner of the commercial property, Defendant, “Mariner Capital”, which house the restaurant “Acai Brazil”.

Gonzalez v. SHF 18, LLC
Complaint for Injunctive Relive

14. As the owner and operator of a restaurant. Defendant, “SHF 18, LLC”, and the need to provide equal access to all areas of its facilities. Therefore, its failure to reasonably accommodate mobility impaired and disabled patrons by ensuring that its facility is fully accessible is/was willful, malicious, and oppressive and in complete disregard for the Civil Rights of the Plaintiff and in violation of 28 C.F.R. §36.302.

15. As the owners of commercial property which built out and utilized as restaurant an establishment that provides goods/services to the general public, Defendant, “Mariner Capital”, is also defined as a “Public Accommodation” within meaning of Title III; 42 U.S.C. §12182, §12181(7)(B) and 28 C.F.R. §36.104(2)

16. As the owners of commercial property, which is built as public accommodation, Defendant, “Mariner Capital”, is aware of the ADA and the need to provide for equal access in all areas of its commercial property which are open to the public. Failure to reasonably accommodate mobility impaired and disabled patrons by ensuring that its property is fully accessible is/was willful, malicious, and oppressive and in complete disregard for the Civil Rights of the Plaintiff and in violation of 28 C.F.R. §36.302.

17. As a result of the joint and several discriminations by Defendants, Plaintiff has suffered loss of dignity, mental anguish and other tangible injuries and has suffered an injury-in-fact.

18. Plaintiff continues to desire to patronize and/or test the restaurant operated by “SHF 18, LLC” and located at the commercial property owned by “Mariner Capital”, but continues to be injured, in that he continues to be discriminated against due to the barriers to access within that restaurant which are in violation of the ADA.

Gonzalez v. SHF 18, LLC
Complaint for Injunctive Relive

19. Any and all requisite notice has been provided.

20. Plaintiff has been obligated to retain the civil rights law office of J. Courtney Cunningham, PLLC and has agreed to pay a reasonable fee for services in the prosecution of this cause, including costs and expenses incurred. Plaintiff is entitled to recover those attorney's fees, costs and expenses from Defendants pursuant to 42 U.S.C. §12205.

COUNT I – VIOLATIONS OF TITLE III OF THE ADA

21. The ADA was enacted and effective as of July 26, 1990, and ADA legislation has been protecting disabled persons from discrimination due to disabilities since that time. Over 30 years have passed since enactment of the ADA, public accommodations and places of public accommodation have had adequate time for compliance.

22. Congress explicitly stated that the purpose of the ADA was to:

- (i) provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
 - (ii) provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; and,
 - (iii) invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced on a daily basis by people with disabilities.
- 42 U.S.C. §12101(b)(1)(2) and (4).

23. Prior to the filing of this lawsuit, Plaintiff personally visited the “Acai Brazil” restaurant with the intention to use of their services, and/or test the public accommodation for compliance with the ADA/ADAAG; however, Plaintiff was denied adequate accommodation because, as a disabled individual who utilizes a wheelchair for mobility, Plaintiff met barriers to access. Therefore, Plaintiff has suffered an injury in fact.

Gonzalez v. SHF 18, LLC
Complaint for Injunctive Relive

24. Defendant, “SHF 18, LLC” and Defendant, “Mariner Capital”, have discriminated (and continue to discriminate) against Plaintiff by denying full and equal access to, and full and equal enjoyment of, goods, services, facilities, privileges, advantages and accommodations at the Subject Property in derogation of 42 U.S.C. §12101 *et seq.* and as prohibited by 42 U.S.C. §12182 *et seq.*, by failing to remove barriers to access pursuant to 42 U.S.C. §12182(b)(2)(a)(iv), where such removal is readily achievable.

25. Plaintiff has been unable to, and continues to be unable to, enjoy full and equal safe access to, and the benefits of, all the accommodations and services offered at the “Acai Brazil” restaurant.

26. Defendants are jointly and singularly governed by the ADA and must comply therewith. However, Defendants have discriminated against disabled patrons in derogation of 28 C.F.R. Part 36.

27. Pursuant to the mandates of 42 U.S.C. §12134(a), on July 26, 1991 (as amended), the Department of Justice, Office of the Attorney General, promulgated Federal Regulations to implement the requirements of the ADA, known as the Americans with Disabilities Act Accessibility Guidelines (hereinafter “ADAAG”), 28 C.F.R. Part 36, under which said Department may obtain civil penalties of up to \$75,000 for the first violation and \$150,000 for any subsequent violation.

28. Defendant, “Mariner Capital”, owner of the commercial property, which houses Defendant, “SHF 18, LLC”, is in violation of 42 U.S.C. §12181 *et seq.*, the ADA and 28 C.F.R. §36.302 *et seq.*, and all Defendants, Defendant, “SHF 18, LLC” (operator) and

Gonzalez v. SHF 18, LLC
Complaint for Injunctive Relive

Defendant, “Mariner Capital” (owner of the commercial property) (jointly and severally), are discriminating against the Plaintiff as a result of *inter alia*, the following specific violations:

Parking Lot & Accessible Route

- i. The plaintiff had difficulty using the ramp, as ramp does not provide handrails
Violation: Ramp is missing the handrails on both sides of the ramp, violating Section 4.8.5 of the ADAAG and Section 405.8 of the 2010 ADA Standards, whose resolution is readily achievable.
- ii. The plaintiff had difficulty traversing the path of travel, as it was not continuous and accessible. Violation: There are inaccessible routes between sections of the facility. These are violations of the requirements in Sections 4.3.2(2), 4.3, and 4.5 of the ADAAG and Sections 206.2.2, 303, 402 and 403, whose resolution is readily achievable.
- iii. The plaintiff had difficulty travel to the building from the accessible parking space as there are cross slopes in excess of 2% Violation: The path of travel contains excessive cross slopes in violation of Section 4.3.7 of the ADAAG and Section 403.3 of the 2010 ADA Standards, whose resolution is readily achievable.
- iv. The plaintiff had difficulty using the ramp, as ramp does not provide the required edge protection. Violation: Ramp does not provide edge protection violating Section 4.8.7 of the ADAAG and Section 405.9 of the 2010 ADA Standards, whose resolution is readily achievable.
- v. The plaintiff had difficulty exiting the vehicle, as designated accessible parking space is located on an excessive slope. Violation: Accessible parking space is located on a non-compliant slope in violation of Section 4.6.3 of the ADAAG and Section 502.4 of the 2010 ADA Standards, whose resolution is readily achievable.
- vi. The plaintiff had difficulty exiting the vehicle, as designated accessible parking space access aisle is located on an excessive slope. Violation: Accessible parking space access aisle is located on a non-compliant slope violating Section 4.6.3 of the ADAAG and Section 502.4 of the 2010 ADA Standards, whose resolution is readily achievable.
- vii. The plaintiff had difficulty using the ramp towards building, as the bottom landing is not compliant. Violation: The ramp bottom landing has a non-compliant surface slope violating Section 4.8.4 of the ADAAG and Section 405.7.1 the 2010 ADA Standards, whose resolution is readily achievable.

Gonzalez v. SHF 18, LLC
Complaint for Injunctive Relive

- viii. The plaintiff had difficulty travel to the building from parking lot. Violation: The surface of the accessible route is not slip resistant and/or is broken, has loose material and unstable. Violating Section 4.3.6, 4.5.1 of the ADAAG and Section 206.2, 403.2, 302.1, 303.1 of the 2010 ADA Standards, whose resolution is readily achievable.
- ix. There are accessible parking spaces and access aisles with faded striping that makes it impossible to differentiate the boundaries. The facility fails to maintain the accessible elements that are required to be readily accessible and usable by persons with disabilities, Violating sections 4.6.3, 36.211 of the ADAAG and Sections 502.3, 36.211, whose resolution is readily achievable.

Access to Goods and Services – Acai Brazil

Interior Seating

- x. The seating provided at the facility does not comply with the standards prescribed in Section 4.32 of the ADAAG and Sections 226 & 902 of the 2010 ADA Standards, whose resolution is readily achievable.
- xi. The facility does not provide the required amount of seating. Failing to provide sufficient amount of seating when dining surfaces are provided for the consumption of food or drinks for person(s) with a disability in violation of section 5.1 of the ADAAG and Sections 226 of the 2010 ADA Standards.

Cashier Counter

- xii. The cashier counter is mounted above the required height. Violation: Counter is mounted over 36” above the finished floor violating Section 7.2 of the ADAAG and Section 904.4.1 of the 2010 ADA Standards, whose resolution is readily achievable.

WHEREFORE, Plaintiff, Jesus Gonzalez hereby demands judgment against Defendants, SHF 18, LLC, d/b/a Acai Brazil, and Mariner Capital, LLC, and requests the following injunctive and declaratory relief:

- a) The Court declare that Defendants have violated the ADA;
- b) The Court enter an Order directing Defendants to evaluate and neutralize their policies, practices and procedures toward persons with disabilities,

**Gonzalez v. SHF 18, LLC
Complaint for Injunctive Relive**

- c) The Court enter an Order requiring Defendants to alter the commercial property and the establishment located therein such that it becomes accessible to and usable by individuals with disabilities to the full extent required by the Title III of the ADA;
- d) The Court award reasonable costs and attorney's fees; and
- e) The Court award any and all other relief that may be necessary and appropriate.

Respectfully submitted this May 14, 2024.

By: /s/ Juan Courtney Cunningham
Juan Courtney Cunningham, Esq.
FBN: 628166
J. COURTNEY CUNNINGHAM, PLLC
8950 SW 74th Court, Suite 2201
Miami, Florida 33156
Telephone: 305-351-2014
cc@cunninghampllc.com
legal@cunninghampllc.com

Counsel for Plaintiff